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C O N F I D E N T I A L SECTION 01 OF 03 CARACAS 001131

SIPDIS

ENERGY FOR ALOCKWOOD AND LEINSTEIN, DOE/EIA FOR MCLINE
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E.O. 12958: DECL: 08/26/2019
TAGS: EPET EINV ENRG ECON CU VE
SUBJECT: VENEZUELA: NEW PETROCHEMICALS LAW

Classified By: Economic Counselor Darnall Steuart, for reasons 1.4 (b) and (d).

¶1. (C) SUMMARY: Venezuela passed a limited-scope Petrochemicals Law in July that covers basic and intermediate sector activities. It permits the Bolivarian Republic of Venezuela (GBRV) to enter into mixed companies with the private sector and attempts to preclude private company recourse to international arbitration to settle disputes. In an August 12 conversation, representatives of Koch Industries described the "creeping expropriation" of their petrochemical investments in Venezuela. END SUMMARY.

¶2. (SBU) Venezuela's Organic Law for the Development of Petrochemical Activities entered into force on July 10, 2009. (Note: It was originally published in the Federal Register-equivalent on June 18, 2009, but was reprinted due to material errors on July 10, 2009 (Official Gazette No. 39,218)). The new Petrochemicals Law does not regulate all petrochemical activities, but has a limited scope of application, beginning with the processing of raw petrochemical products and ending with the transformation of the products obtained from such processing. It does not apply to activities regulated by the 2001 Hydrocarbons Law or the 1999 Gaseous Hydrocarbons Law.

¶3. (SBU) The Petrochemicals Law reserves basic and intermediate petrochemical activities for the State, as well as the assets and facilities required for their handling. It allows the State, through the Ministry of Energy and Petroleum (MENPET), to create mixed companies in which the GBRV will not only control 50% of the shareholder equity, but also have effective control over the company decisions. (NOTE: There were twelve petrochemical joint ventures at the time the law was published, involving companies from the U.S., Canada, Colombia, Spain, Italy, Japan, and the Netherlands.) Creation of the companies requires authorization by the MENPET and National Assembly. The duration of joint ventures will be forty years, extendable

for successive periods of fifteen years. The legislation mandates that certain investment incentives for the GBRV will be required for authorization of a mixed company including, technology transfer, incentives for industrial development, infrastructure supply, facility maintenance, social resources, import substitution, price advantages, and estimated profits.

¶4. (SBU) The Petrochemicals Law gives priority to the supply of the domestic market and the development of State and socialist companies. Upon expiration of the term of a mixed company, its works, ancillary facilities, and equipment shall be delivered to the State, free of encumbrance and without any indemnity whatsoever. Although the Petrochemicals Law does not forbid arbitration as a dispute resolution method, it does say that such disputes shall not give rise to international arbitration. Commercial arbitration, as mandated under Venezuela's Commercial Arbitration Law, is cited as an acceptable means for amicably resolving disputes.

¶5. (SBU) Under the law, companies have sixty days to list themselves on a National Registry of Petrochemical Companies before they are authorized to operate. Companies that were already engaged in activities regulated by the law were given until August 18 to register - it is notable, however that the registry is not functioning yet. Finally, per an amendment to regulations for CADIVI, Venezuela's foreign currency control board, published in the Official Gazette on August 11, 2009, mixed companies created pursuant to the Petrochemicals Law are permitted to keep foreign bank

accounts in foreign currency.

STATUS of U.S. INVESTMENTS IN THE PETROCHEMICALS SECTOR

¶6. (C) Embassy representatives met August 12 with representatives of Koch Industries to discuss their investments in Venezuela's petrochemicals sector. Koch has a 35 percent share in FertiNitro (Fertilizantes Nitrogenados de Venezuela, an ammonia and urea project located in the Jose petrochemical complex. Venezuela,s national petrochemical company Pequiven has a 35 percent share, while an affiliate of Italy's Snamprogetti S.P.A. has 20 percent and the remaining 10 percent share is held by Empresas Polar. According to the Koch representatives, Pequiven began diverting a higher percentage of FertiNitro's production to the domestic market in 2006. This was followed by a 2007 government regulation mandating that urea be supplied first to the domestic market. Since then Pequiven has run the Jose facility itself; Koch pulled its own people out in 2007.

¶7. (C) Koch has received verbal assurances from Pequiven that the project would not be affected by the new petrochemical legislation. In the event of nationalization, however, Koch has prepared by registering its FertiNitro affiliate in Switzerland to give it access to the Swiss Bilateral Investment Treaty. A Koch representative added that Pequiven's management of the facility could be termed a "creeping expropriation" given that it no longer consults with the FertiNitro Board or abides by other contract provisions.

¶8. (C) Koch Industries also has a 35 percent share in Profalca (Propilino de Falcon), a $100 million propylene splitter plant located at the Paraguana refinery complex. The other shares are held by Venezuelan companies including Pequiven, 35 percent; Empresas Polar, 15 percent; and Inelectra, 15 percent. The Koch Industries representatives noted that the plant has not produced for a year because of a shortage of natural gas.

¶6. (SBU) A summary of Venezuelan laws governing the various aspects of the hydrocarbons industry follows:

Activity //Description//Regulating Law

Petrochemicals//Transformation of raw petrochemical products of hydrocarbons by separation, purification, conversion and combination of the products obtained using chemical, physical, and transformation methods//2009 Petrochemicals Law

Refining of liquid hydrocarbons//Distillation, purification, transformation of natural hydrocarbons to add value//2001 Hydrocarbons Law

Industrialization of refined hydrocarbons//Separation, distillation, purification, conversion, blending and transformation to add value by obtaining special petroleum products and derivatives//2001 Hydrocarbons Law

Industrialization of gaseous hydrocarbons//Chemical, physical or chemical-physical transformation processes to add value//1999 Gaseous Hydrocarbons Law

Processing of natural gas liquids//Separation, extraction, fractioning, storage and commercialization//Regulations of the 1999 aseous Hydrocarbons Law

¶7. (C) COMMENT: Post beieves the Petrochemicals Law's 50-50 ownership slit between the GBRV ad the private sector came

about through Japanese and Brazilian intervention. Early drafts of the law reflected the same 60-40 split found in the petroleum sector joint ventures. As noted above, Koch Industries has received verbal assurances from Pequiven that its projects would not be affected by the new legislation. Koch was informed that it would receive a letter to that effect which it has not received. The Koch representatives reported that Japan,s Metor (Note: Metor is a joint venture between Mitsubishi Gas Chemical and Pequiven) investment has received such a letter from Pequiven. A 50-50 split, however, reflects semantics, as the GBRV guarantees to itself effective control over all management decisions. END COMMENT.

DUDDY